

Remarks

Claims 1-30 were pending in this application. Applicants acknowledge withdrawal of Election of Species requirement by the Examiner. Claims 1 and 25 have been amended. The amendments made herein to the specification and claims do not incorporate new matter into the application as originally filed. Support for the amendments can be found in the drawings and throughout the instant specification.

As an initial matter, it should be noted that aspects of the present invention are directed to an abrasion device and use of the device having specialized protrusions by positioning the abrader device on the skin of a patient, structures and steps for retaining and applying a therapeutic substance to the skin of the patient and rotating the protrusions against the skin to disrupt the skin, thus delivering the therapeutic substance to the skin.

Claim Rejections under 35 USC § 102

The Examiner has rejected Claims 1-4, 7-9, 16-19, 21 and 25-30 under 35 U.S.C. §102(b) as being anticipated by Min, U.S. Patent Number 5,618,295 (hereinafter “Min”). The Examiner has rejected Claims 1-4 and 7-24 under 35 U.S.C. 102(b) as being anticipated by Sherman et. al. PCT Publication WO 02/32331 (hereinafter “Sherman”). Independent Claims 1 and 25, as presently amended, now recite the limitations of frustoconical protrusions with at least one scraping edge. This limitation which has been incorporated into Claims 1 and 25 distinguishes over both references. Furthermore, independent Claims 1 and 25, as presently amended, now recite the limitations of a radial arrangement of microprotrusions with specific therapeutic fluid retention areas. Sherman contains no reference to radially aligned microprotrusions with therapeutic fluid retention areas, and is concerned only with linearly aligned protrusions. Furthermore, neither Min nor Sherman disclose or suggest a therapeutic substance retaining means within the array.

To support a rejection of a claim under 35 U.S.C. § 102, it must be shown that each element of the claim is found, either expressly described or under principles of inherency, in a single prior art reference. In addition, the prior art reference must disclose the limitations of the claimed invention “without any need for picking, choosing, and combining various disclosures not directly related to each other by the teachings of the cited reference.” Therefore, since Min or Sherman do not describe or suggest either alone

or in combination any of the array structural or therapeutic fluid retention limitations, these references cannot anticipate the Applicants' invention as claimed. Applicants respectfully requests that the Examiner withdraw the 35 U.S.C. §102 rejections against Claims 1-4 and 7-30.

Claim Rejections under 35 USC § 103 (Min in view of Sherman)

The Examiner has rejected Claim 5-6 is rejected under 35 U.S.C. 103(a) as being obvious over Min in view of Sherman. Applicants respectfully traverse this rejection.

The claims as now amended have specific abrader protrusion alignment and fluid retention characteristics which are not taught or suggested by Min or Sherman, alone or in combination. The Applicant contends that independent claims 1 and 25, as now presently amended, and dependent claims 2-24 and 26-30 distinguish over both Min and Sherman and the rejection of Claims 5-6 is moot.

Furthermore, neither Min nor Sherman provide motivation to modify the characteristics of the array of Min for therapeutic fluid retention in the resultant combination device. Furthermore, Sherman does not teach or suggest rotational delivery. Additionally, one cannot presume the array of the Sherman device could be modified for rotational delivery. The Examiner should note, according to MPEP §2143.02, that if a proposed modification would render the prior art invention modified unsatisfactory for its intended purpose, then there is no suggestion or motivation to make the proposed modification. In contrast, the microprotrusions of the present invention are specifically aligned in the abrader, which is used in a radial fashion, with therapeutic fluid retention means. Therefore, the current limitation in independent Claims 1 and 25 as now amended, would be a modification of Min (in conjunction with Sherman), which would render the resultant device of the combination of Min and Sherman unsatisfactory for its intended purpose. Therefore, since the resultant device of the combination of Min and Sherman does not describe or suggest either alone or in combination any of the array alignment, fluid retention or structural limitations, this combination of references cannot render the Applicants' invention as obvious. Applicants respectfully requests that the Examiner withdraw the 35 U.S.C. §103 rejections against Claims 5 and 6.

Conclusion

In view of the Remarks above, applicant respectfully submits that Claims 1-30 are in condition for allowance, and respectfully requests that the Examiner earnestly reconsider the rejections and objections of the present application. Applicant hereby authorizes the Commissioner to charge the fees necessary in connection with this Response, and any other fees necessary in connection with this application, to Deposit Account Number 02-1666.

In light of the above amendments and remarks, Applicant respectfully requests that the Examiner enter the amendments and consider the remarks made herein. Consideration and prompt allowance of the claims are respectfully submitted.

Any questions concerning this application or amendment may be directed to the undersigned agent of applicant.

Respectfully submitted,

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By: /Robert E. West Reg #48,030/

Robert E. West
Reg. No. 48,030
Agent for Applicants
(201) 847-6782

Becton, Dickinson and Company
1 Becton Drive
Franklin Lakes, NJ 07417-1880
Fax : 201-847-5377
Customer No. 26253

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